



Virginia
Regulatory
Town Hall

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Proposed Regulation Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC5-50
Regulation title	Retail Operations
Action title	Updating Retail Operations Regulations as a Result of Periodic Review
Date this document prepared	November 5, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The purpose of this action is to amend the board's regulation governing alcoholic beverage retailers to implement changes suggested by a recent periodic review. The action is intended to 1) list crimes by description rather than Code citations when describing convictions that disqualify employees; 2) require designated managers to be able to communicate in English; 3) better define the types of restaurants that are eligible for a wine and beer license, and to further distinguish restaurants that are eligible for a mixed beverage license; and 4) expand the ability of restaurants to advertise times within which drink specials are offered, without allowing advertising of specific special prices.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

There are no acronyms or technical terms used in the document.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a

specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Section 4.1-111 of the Code of Virginia authorizes the Alcoholic Beverage Control Board to promulgate reasonable regulations necessary to carry out the provisions of this title or the general laws of the Commonwealth. §4.1-103 of the Code of Virginia compels the Alcoholic Beverage Control Board to "(e)stablish minimum food sale requirements for all retail licensees."

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The proposed regulatory actions are necessary for the following reasons. First, the Board wants to clarify the types of restaurants that are eligible for a wine and beer license, as well as those restaurants that qualify for a mixed beverage license. This proposal expands current statutory provisions for licensees (ability to read, write, speak and understand the English language) to managers. It further simplifies the regulation by describing the criminal offenses that disqualify an employee of the business rather than citing specific sections of the Code of Virginia. Finally, the proposal will expand a restaurant's ability to advertise the fact that drink specials are offered during specific times.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

It is anticipated that these proposals will amend Chapter 50 so that the regulated industry will have a better understanding of the types of restaurants eligible for licensure and give further guidance concerning the responsibility of licensees in conducting and advertising "happy hours". It will simplify the regulation by identifying the specific criminal conduct that disqualifies an individual as opposed to the section of the Code of Virginia.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

It will benefit the regulated community to clarify the types of restaurants that are eligible for a wine and beer licenses, as well as those restaurants that qualify for a mixed beverage license. This proposal expands current statutory provisions for licensees (ability to read, write, speak and understand the English language) to managers. The industry will benefit from expanding a restaurant's ability to

advertise drink specials offered during specific times, and the public will be protected by continuing the limitation of any practice associated with “happy hour”, such as extending the time frame beyond 9:00 p.m. There are no disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

This will not have any particular impact on any locality.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to **W. Curtis Coleburn, Chief Operating Officer, Department of Alcoholic Beverage Control, Post Office Box 27941, Richmond, Va. 23261, curtis.coleburn@abc.virginia.gov, telephone (804) 213-4409, facsimile (804) 213-4411.** Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements creates the anticipated economic impact.

Projected cost to the state to implement and	None
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enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.	
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	None
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	Retailers of alcoholic beverages.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	12,000 businesses of which approximately 70% are small businesses.
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	None
Beneficial impact the regulation is designed to produce.	Streamlining and clarifying the business practices of retailers of alcoholic beverages.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There is no viable alternative to affect the proposed changes. The use of Circular Letters and other guidance documents in lieu of regulatory changes was considered, but such instruments do not have the force of law as formally promulgated regulations.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for

small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The board has not identified any alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law. The proposed regulatory change has no reporting or additional record keeping requirements.

Small business impact review result

In order to minimize the economic impact of regulations on small businesses, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency’s determination of whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The proposal is easily understandable and does not conflict with other state or federal laws or regulations. This regulation was last amended in 2009. The proposals are a result of industry suggestions. Neither technology, economic conditions, or other factors have changed significantly in the area affected by the regulation. The proposal imposes no reporting or additional record keeping requirements.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
20 non-registered Townhall users	Retain regulation in current form, do not expand nudity or extend happy hours	The board attempts to strike a balance between the public safety and the ability of retailers of a lawful product to responsibly market. There are no plans to loosen restrictions on nudity in licensed establishments or the practices associated with “happy hour” promotions (i.e., no increase in allowed hours, no pitchers of mixed drinks, etc.). On the other hand, the board believes that current laws prohibiting the service of underage or intoxicated individuals, if properly enforced, should be sufficient to deal with the risk of overconsumption during “happy hour” promotions.
1 non-registered Townhall user	Require fingerprints for license renewal	
1 non-registered Townhall user	Allow exotic dancing, allow advertising of happy hour, extend happy hour	
Linda Hancock, Virginia College Alcohol Leadership Council	Eliminate happy hour or maintain current restrictions Limit size of flavored malt beverages	

<p>Wayne Frith, Chesterfield SAFE</p> <p>Sue Parr</p> <p>Virginia Beer</p>	<p>Prohibit bartenders from mixing energy drinks with alcoholic beverages</p> <p>Define a standard drink, and require bartenders to use a measured pour</p> <p>Outlaw happy hour promotions</p> <p>1. None of the VA ABC regulations should be "loosened " in any way. The current regulations should remain in place.</p> <p>2. Happy Hour advertising should not be allowed in any form.</p> <p>3. Discount coupons for alcohol should not be allowed.</p> <p>4. Mixed drinks should not be sold by the pitcher.</p> <p>In addition to that, the coalition membership supports:</p> <p>1. All alcohol seller/servers should be required to attend a mandatory training such as TIPS.</p> <p>2. There should be a "standard pour" measure to ensure the amount of alcohol in the drink does not exceed specified amount so individuals know how much alcohol they are consuming.</p> <p>3. Placing serving alcohol should not be allowed to sell energy drinks also-this avoids ability to create alcohol energy drinks banned by FDA as dangerous.</p> <p>4. "Supersized" malt liquor drinks (especially fruit flavored) should not be sold in single serving containers as it basically promotes binge drinking in a can!</p> <p>5. Though we know that VA ABC Board does not control state law, for the record, the coalition would like to state their support for dram shop & social hosting laws in VA.</p> <p>3VAC5-50-10 Clarify only applies to</p>	<p>The agency did not incorporate this because it</p>
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Wholesalers	retail licensees. 3VAC5-50-40 Clarify only applies to retail licensees.	is already covered. The agency accepted this proposal.
Virginia Wine Wholesalers	3VAC5-50-10 Clarify only applies to retail licensees. 3VAC5-50-40 Clarify only applies to retail licensees.	The agency did not incorporate this because it is already covered. The agency accepted this proposal.
Distilled Spirits Council of the United States	3VAC5-50-160 Allow pitchers of distilled spirits.	The agency rejected this for public safety reasons.
Virginia Hospitality and Travel Assoc.	3VAC5-50-10 Oppose change to include separate violation for under age possession of alcohol because “there is no statutory authority [for the change]”. 3VAC5-50-20 Oppose presumption language regarding electronic verification of age. 3VAC5-50-40 Oppose including managers have ability to read, write, speak and understand the English language. 3VAC5-50-60 Support change to eliminate requirement that Board approve frozen drink dispensers for mixed beverage licensees. 3VAC5-50-110 Request further public comment. 3VAC5-50-160 Support changes in advertising of “happy hour”.	Statutory authority exists and this proposal is a clarification that possession is included in violation. The agency accepted this and did not include presumption subsection. The agency rejected this for public safety reasons, and this specifically addresses parties who are required to be on premises checking identification and communicating with law enforcement. The agency accepted this because it lessens the burden on the regulated community. The agency considered public comment, and modernized definitions covered in this section. The agency incorporated this proposal.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This action is not anticipated to have any impact on the institution of the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
3VAC5-40		Criminal activity is identified by code citation.	Criminal activity is identified by substantive language.
3VAC5-40		No regulatory requirement that managers have ability to communicate in English.	Regulation incorporates existing statutory authority that requires managers have ability to communicate in English.
3VAC5-50-110		The language does not consider recent developments of the restaurant business.	Modernize definitions and descriptions to reflect current trends in the restaurant industry.
3VAC5-50-160		Limits advertising of "happy hour" to inside premises.	Expand advertising of "happy hour," while maintaining limitations on practice of "happy hour."

If a new regulation is being promulgated, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

Enter any other statement here